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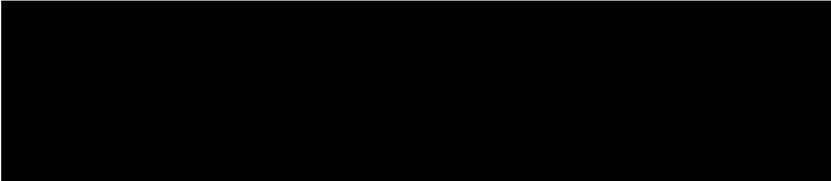
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: COW

Date:

AUG 20 2008

IN RE:

Obligor:

Bonded Alien:



IMMIGRATION BOND:

Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Director, Headquarters, Bonds, Immigration and Customs Enforcement (ICE), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on September 16, 2004, the obligor posted a \$25,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 4, 2008, was sent via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of ICE for an interview and case review at 10:00 a.m. within five days of April 24, 2008, at the nearest ICE, Detention and Removal Office. The obligor failed to present the alien, and the alien failed to appear as required. On May 12, 2008, the director informed the obligor that the delivery bond had been breached.

The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996). Consequently, the record clearly establishes that the notice was properly served on either the obligor or the co-obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). **Reference in this decision to the obligor is equally applicable to the co-obligor and vice versa.**

On appeal, counsel asserts that the bonded alien has a petition for review before the United States Court of Appeals for the Fourth Circuit (Fourth Circuit) that is currently pending.

The record reflects that a removal hearing was held on November 4, 2005 and the alien was ordered removed from the United States. On November 5, 2005, the bonded alien appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On May 3, 2007, the BIA dismissed the alien's appeal. On July 31, 2007, the alien filed a motion to reopen before the BIA. On September 14, 2007, the BIA denied the motion to reopen. On October 3, 2007, the alien filed a second motion to reopen before the BIA. On November 30, 2007, the BIA denied the motion to reopen. On December 28, 2007, the alien filed a petition for review before the Fourth Circuit. On April 24, 2008, the alien filed a motion to stay of removal before the Fourth Circuit. On May 2, 2008, the Fourth Circuit denied the motion to stay of removal.

An appeal to the federal court of appeals does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1252(b)(3)(B). In instant case, the Fourth Circuit did not stay the bonded alien's removal.

On appeal, counsel asserts that the bonded alien did not appear on April 24, 2008, because the alien had significant concerns that she may be deported prior to a decision on her motion to stay and appeal before the Fourth Circuit.

Counsel's assertion has not merit as the bonded alien was scheduled for an interview and case review and not for deportation. The obligor is not relieved of its responsibility to deliver the bonded alien at the time and place specified in the field officer director's demand notice as said director may call the alien in for an interview or custodial determination at any time. The obligor is bound by the terms of the contract to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Bond proceedings are separate and distinct from removal proceedings. Removal proceedings are between the United States government and an alien with a questionable right to remain in the United States. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien dated April 4, 2008 was sent via certified mail. This notice demanded that the obligor produce the bonded alien within five days of April 24, 2008. The domestic return receipt indicates the obligor received notice to produce the bonded alien on April 7, 2008. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to ensure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the director will not be disturbed.

ORDER: The appeal is dismissed.